

DEQ's Renewable Energy Permit by Rule: Background & Status

Carol C. Wampler
Virginia Department of Environmental Quality

For
Solar RAP Meeting
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VIRGINIA ACTS OF
ASSEMBLY -- 2009
RECONVENED SESSION
CHAPTER 808 & 854

Virginia General Assembly
**“Small Renewable Energy
Projects” Legislation**
HB 2175 & SB 1347
Approved: April 8, 2009





Directs DEQ to develop by regulations

**“permits by rule . . . for the
construction and operation of
small renewable energy projects,**

**including such conditions and
standards necessary to protect the
Commonwealth’s natural
resources”**



Statutory Goals:

- ✚ **Promote renewable energy** – provide certainty, timeliness, reasonable regulatory requirements
- ✚ **Protect natural resources** – provide enforceable standards that are protective of wildlife & historic resources at/near project site



What is a
**“small renewable energy
project”?**



100 MW



An electrical generation facility
producing electricity from . . .

♻️ biomass

♻️ energy from waste < 20 MW

♻️ municipal solid waste





An electrical generation facility
producing electricity from ...

wind

sunlight

falling water

motion

tides

geothermal power

biomass

energy from waste

municipal solid waste

Statutory Deadlines for Permits by Rule:

January 1, 2011, for WIND

July 1, 2012, for all others



Current Practice:

- ✿ Developer applies to SCC for individual permit
- ✿ Environmental agencies submit recommendations to SCC re proposed site
- ✿ SCC decides what environmental requirements to include in order



New System:

- ✿ Developer applies to DEQ for permit by rule (PBR)
- ✿ Environmental requirements are set forth “up front” in regulation for all sites
- ✿ If applicant meets requirements and submits required certifications, then DEQ notifies applicant that project is authorized under PBR.



Note . . .

- ✿ *Neither current practice nor DEQ's new PBR approach abrogates applicant's need to obtain state regulatory environmental permits.*



WHAT IS THIS “PERMIT BY RULE”?





A Permit by Rule (PBR) is . .

- ✿ Expedited permitting process used by DEQ for certain solid waste facilities
- ✿ Regulation stating “up front” the criteria that applicant must meet
- ✿ Requirement that applicant submit docs/certification that has met requirements
- ✿ Requirement that DEQ review submission for completeness & adherence to reg
- ✿ If complete, then DEQ notifies that project is authorized under the PBR



A Permit by Rule is **not** . . .

- ✪ An individual permit
- ✪ Site-specific
- ✪ Based on a case-by-case technical analysis



***Statutory
Renewable Energy
Permit by Rule
Requirements***



PBR Criteria

10.1-1197.6.B

- ✪ Notice of intent
- ✪ Local-government certification
- ✪ Interconnection studies
- ✪ Final interconnection agreement
- ✪ PE certification of generation capacity
- ✪ Analysis of impacts on NAAQS



PBR Criteria (continued)

- ✚ **Analysis of impact on natural resources**
- ✚ **Determination of likely significant adverse impacts; mitigation plan**
- ✚ PE certification of design
- ✚ Operating plan
- ✚ Site plan
- ✚ Certification re environmental permits
- ✚ Public meeting
- ✚ Public comment period



DEQ's Operative Provisions

10-1:1197.6.B.7:

Applicant shall provide

“an **ANALYSIS** of the
beneficial and adverse impacts
of the proposed project on
NATURAL RESOURCES”



Operative provisions (continued)

10.1-1197.6.B.8:

- (1) **Department determines**
if foregoing analysis
“indicates that
significant adverse impacts
to **wildlife**
or **historic resources**
are **likely**”



If so, then . . .

(2)

 **MITIGATION PLAN**

 **MEASURE EFFICACY**

(post-construction monitoring)



Chief PBR Operating Provisions

✚ <u>Analysis</u>	Wildlife	HR	Other
✚ <u>Significant impact?</u>	Wildlife	HR	
✚ <u>Mitigation & Monitoring</u>	Wildlife	HR	



Our special challenges:

- ✿ One-size-fits-all regulation vs. site-specific resource protections
- ✿ Authority vested in DEQ Director – a first
- ✿ Substantive authority/expertise vested in other state agencies; however, regulatory authority & extensive experience in administering permit programs reside in DEQ
- ✿ Most of experience in wind-energy development is outside state government
- ✿ RAP must complete work in a short amount of time



After long deliberations . . .

the original Wind RAP

AGREED

on all

but 3 issues!!!



Those 3 issues . . .

- ✿ What exemption/notice requirement should apply for projects 5 MW and less
- ✿ **What wildlife – other than bats – should constitute a mandatory trigger for mitigation (SGCN?)**
- ✿ What avian field studies should be done in coastal zone

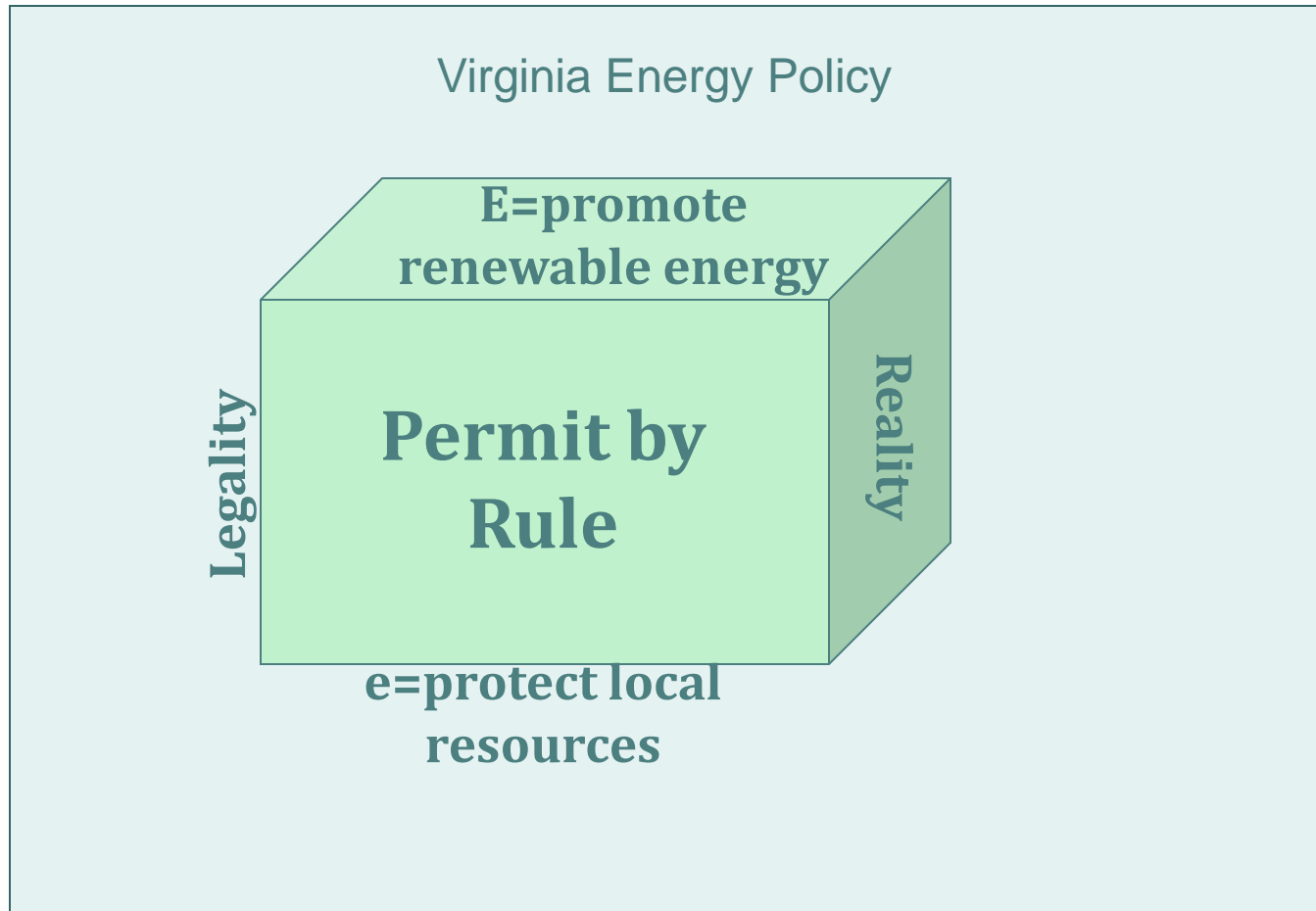


“Paylor Principle”

We should not make it more difficult to permit a renewable-energy facility than to permit other types of development, unless there is a very good reason (e.g., wind turbines’ impact on bats – a special, unique impact).



“Small Renewable Energy Project” PBR





***When applying
the Paylor
Principle . . .***



The threshold question is:

***Do solar projects
present
a unique or special threat
to natural resources
(wildlife and historic resources)?***



- ✚ If not, are PBR protections needed or warranted?
- ✚ If so, what PBR protections are needed?



There are no "bad guys" in our RAP
discussions.

Everyone is trying to do something
good for energy and the environment!



***What's
next?***



For solar . . .

- ☸ You, the Solar RAP, will continue to meet to discuss what, if any, natural-resource protections are needed in Solar PBR
- ☸ Next meeting is September 9, 2010
- ☸ RAP's recommendations submitted to Director
- ☸ Remainder of APA process will occur



Contact information . . .

Carol C. Wampler, DEQ

629 E. Main Street

Richmond, VA 23219

804-698-4579

carol.wampler@deq.virginia.gov

carol.wampler.renewable.energy@gmail.com